IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 10TH DECEMBER 2007 / 19TH AGRAHAYANA 1929

CRP.No. 209 of 2007()

OP(EA)NO.552/2002 of ADDL.DISTRICT COURT,ALAPPUZHA.
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REVISION PETITIONER: RESPONDENT:

POWER GRID CORPORATION OF INDIA LTD.,
LOCAL OFFICE, NANGIARKULANGARA,
KAYAMKULAM, REP. BY ITS MANAGER.

BY ADV. SRI.MILLU DANDAPANI

RESPONDENT: PETITIONER:

G.KESAVA PILLAI,
S/O GOPINATHA PANICKAR,
SASTAHAMANGALAM HOUSE,
CHINGELI VILLAGE, KARTHIKAPPALLY TALUK.

BY ADV. SMT.VILASINI NAYAK
SRI.C.S.AJITH PRAKASH
SRI.T.K.RADHAKRISHNA PILLAI

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 10/12/2007 ALONG WITH C.R.P.NO.906 OF 2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.N.KRISHNAN, J

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C.R.P.Nos.209 & 906 OF 2007

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Dated this the 10th day of December 2007

O R D E R

Both these revision petitions are preferred against the award of the Addl.District Judge, Alappuzha in O.P.(EA)No.552 of 2002. CRP.No.209 of 2007 is filed by the respondent and the other revision is preferred by the claimant therein. After considering the materials the Addl.District Judge has awarded additional compensation of Rs.1,15,025/- with 6% interest. The claimant dissatisfied with the award has preferred the revision whereas the respondent has challenged the award on the ground that the amount awarded is exorbitant. Learned counsel for the respondent in the O.P. would contend that the calculation has been adopted by applying the dictum of the Full Bench of this Court reported in Kumba Amma v. KSEB(2000(1) KLT 542). Learned counsel for the petitioner had drawn my attention to the decision of the Apex Court reported in KSEB v. Livisha(2007(3) KLT 1(SC) where the Apex Court held that each case has to be decided on the facts and circumstances of that case and had given the following guidelines.

> "The situs of the land, the distance between the high voltage electricity line laid thereover, the

> extent of the line thereon as also the fact as to whether the high voltage line passes over a small track of land or through the middle of the land and other similar relevant factors in our opinion would be determinative. The value of the land would also be a relevant factor. The owner of the land furthermore, in a given situation may lose his substantive right to use the property for the purpose for which the same was meant to be used. So far as the compensation in relation to fruit bearing trees are concerned the same would also depend upon the facts and circumstances of each case".

2. So from this decision the matter has to be considered elaborately on the principles laid down by the court. Therefore the matter requires reconsideration.

3. On the other hand, learned counsel for the claimant had brought to my attention at least 3 points which according to her requires further consideration by the court below. It is submitted by the learned counsel that it is 220 KV line that is passing through the top of the house and on account of the fact that the trees on the sides had been cut and removed and the structure of the house itself has been affected. Cracks had developed on account of the intensity of the voltage. It is a matter which requires scientific consideration. Secondly, it is submitted that 20 fruit bearing coconut trees had been compensated. But at the same time the non-yielding timber trees were not adequately compensated. If the non-yielding timber

trees were allowed to remain in the property as such it is submitted that by passage of time it would have become real timber and would have fetched much more compensation what is granted to the claimant. I feel it is also a matter which requires consideration at the hands of the court below. Thirdly, it is submitted that it is incorrect to hold that only 20 cents of property had been affected whereas the entire property is affected and further that the diminution of land value at the rate of 30% is incorrect whereas it is in toto. To these arguments, learned counsel for the respondent would contend that these are all matters which had not been canvassed before the court below at that stage and therefore it does not require consideration.

4. The decision of the Apex Court referred to above, wherein very scrupulous guidelines are given, has very specifically stated that the situs of the land, the distance between the high voltage line laid thereover, the extent of the line thereon as also the fact as to whether the high voltage line passes over a small track of land are very relevant factors which would be determinative in deciding the compensation. The Apex Court also held that the value of the land is another relevant factor and in a given situation, the owner may loose his substantive right to use the property for the purpose of which the same was meant to be used. Again the Apex Court held that so

far as the compensation in relation to fruit bearing trees are concerned the same would also depend upon the facts and circumstances of each case. So, it is the sum and substance of all these ingredients put together the question of compensation has to be determined. One shall not be dealt in isolation with the other. It is the cumulative effect that will have the impact on the property. But, certainly these are all matters which have to be proved by cogent and convincing evidence.

5. Therefore, I find that the matter requires detailed consideration and the award passed by the court below is liable to be set aside. Therefore, the award under challenge is set aside and the matter is remitted back to the court below with a direction to consider and dispose of the entire matter afresh and the points referred to by me in the order and especially also in the light of the decision of the Apex Court which gives clear guidelines how to fix the compensation in a case of this nature. For this, the parties be permitted to adduce both oral and documentary evidence.

It is submitted that an amount of Rs.57,513/- has been deposited in the light of the order of this Court dated 20.9.2007. I permit the claimant in the O.P.(EA)552/2002 to withdraw that amount by filing an affidavit to the effect that in case any amount is found to be in excess ultimately he will

redeposit the same. It is so ordered because at any rate the claimant is entitled to compensation. Parties are directed to appear before the court below on 22.1.2008.

M.N.KRISHNAN, JUDGE

Cdp/-